

EXHIBIT 1

In The Matter Of:

*Jamie Douglas v.
Schweiss Distributing, Inc., et al*

*Donald Geib
March 11, 2003*

*Brusilow & Associates
1926 Arch Street
1st Floor West
Philadelphia, PA 19103-1404
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*Original File GEIB0311.V1, 89 Pages
Min-U-Script® File ID: 3274504234*

Word Index included with this Min-U-Script®

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(1) spoofs around the drum?
(2) A: Uh huh.
(3) Q: Is that yes?
(4) A: I did. Sorry. Yes.
(5) Q: And was this on the left hand door or
(6) the right hand door?
(7) A: Like I said, I only remember looking
(8) at the left hand door.
(9) Q: All right.
(10) A: And there was guards on them.
(11) Q: We have three types of guards on the
(12) tables here in front of us, Exhibits A, B and C.
(13) That have been marked previously.
(14) Do any of these three look
(15) similar to the shields that you saw in September of
(16) 1977?
(17) A: No.
(18) Q: How do these differ from the ones you
(19) saw or if you can describe for me what the ones
(20) looked like that you saw?
(21) A: The cables I replaced was just a
(22) floating guard with a nipple, or whatever you would
(23) call this piece of pipe coming down through the
(24) top.

(1) was in a flush situation with the inside of that
(2) guard.
(3) MR. DEVLIN: Meaning
(4) with the angle iron?
(5) THE WITNESS: This
(6) angle with this angle. There
(7) would be no projection to the
(8) pipe down to that.
(9) BY MR. POPILOCK:
(10) Q: The pipe wasn't projecting farther
(11) past the angle iron at all on the inside?
(12) A: No. It was just that it could ride
(13) on top of the angle drum.
(14) Q: And was that true for each of the
(15) three cables on the left door?
(16) A: Yes, because I remember lifting them
(17) up, and once I took the cables off at the header, I
(18) could thread it right through and take them off.
(19) Q: Do you recall whether these guards
(20) were painted any color?
(21) A: I just remember it being just regular
(22) metal. I don't remember any colors on them.
(23) Q: Did it appear to you that at one
(24) point there was a collar or some device on the

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(1) MR. DEVLIN: Indicating
(2) the brown pipe that the cable
(3) goes through.
(4) THE WITNESS: That the
(5) pipe projected up through that
(6) guard, and the cable runs
(7) through it. There was no
(8) sleeve, would be the difference.
(9) BY MR. POPILOCK:
(10) Q: If we look at Exhibit A, for example,
(11) the angle iron on the outside looks similar?
(12) A: Yes.
(13) Q: The pipe that sticks through the
(14) angle iron, that would accept the cable looks
(15) similar?
(16) A: But it was welded just into the sheet
(17) metal.
(18) Q: It was welded to the actual angle
(19) iron itself?
(20) A: Yes.
(21) Q: And then if we turn it over on the
(22) underside, your testimony today is that there was
(23) no collar or welding on the inside?
(24) A: That was flush, this pipe or nipple

(1) inside that may have been taken off, or was it
(2) flush on the inside? Or couldn't you tell?
(3) MR. DEVLIN: Objection.
(4) form of the question.
(5) THE WITNESS: I had no
(6) reason to look at it, so I don't
(7) know. I never examined it,
(8) whether there was a situation
(9) I would think that
(10) something was cut off, then I
(11) would have seen it pretty
(12) readily when I had them off.
(13) But it did not have any collar
(14) on them. That I can say for a
(15) definite fact.

BY MR. POPILOCK:

(16) Q: Did you have any discussions with
(17) Mr. O'Brien on this visit about these guards?
(18) A: No.
(19) Q: Did you have any discussion with
(20) Mr. O'Brien about the fact that the cables were
(21) fraying and needed replacement or what might have
(22) been causing that?
(23) MR. DEVLIN: I have an

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101 objection. He said he only saw
102 a couple of trays sticking out
103 on a cable

104 Go ahead, sir. You can
105 answer.

106 THE WITNESS: Did you
107 have a question? Sorry

108 BY MR. POPILOCK:

109 Q: Did you see fraying on more than one
110 cable?

111 A: Not that I recall. I mean, when I
112 seen that and he said he wanted the cables
113 replaced, I mean, we just went ahead and did the
114 job he requested. And that was pretty much it

115 Q: Did you have any discussion with
116 Mr. O'Brien as to what might have been causing the
117 fraying of this cable?

118 A: No, because I have seen cables fray
119 on sectional doors. I mean, this is just they
120 break down sometimes. I never — it didn't seem to
121 alarming to me.

122 Q: Now, when you operated the door did
123 you observe how this guard would move as the door
124 would open or close?

125 A: Yes

126 Q: And what would the guard do when the
127 door was opening?

128 A: Well, with that cable coming down
129 through the pipe, it just rode across the drum at
130 the speed that that cable revolves around that
131 drum, as it winds it up

132 MR. ABELL: The witness
133 is gesturing with his hand from
134 side to side

135 BY MR. POPILOCK:

136 Q: So the underside of the angle iron
137 would ride on the cable as it wound around the
138 drum?

139 A: Yes

140 Q: Is that right?

141 A: Yes. And you have — if you have a
142 picture of that drum — the cable built up the drum
143 a little, really, so this was just resting right
144 across that flat surface

145 Q: Did that appear to impede the ability
146 of the cable to wind?

147 A: No. There is not much weight, that
148 that little thing on there, it sure don't affect

149 that

150 Q: In September of 1997 did you have an
151 understanding as to what the purpose of that angle
152 iron was?

153 A: Yes

154 Q: And what was your understanding?

155 A: It protects something from getting
156 caught in the cable as it wraps around the drum

157 Q: Did you understand that it was to
158 protect also someone's hands from getting in there?

159 A: Well, I am sure it did enter my mind.

160 But, yeah, that would be common sense. Anything
161 that would get in there, you could not get wrapped
162 around that drum between the drum and the cable

163 Q: So at least in September of 1997, you
164 understood that shield to be a safety shield?

165 A: Yes

166 Q: Did you have any discussion with
167 Mr. O'Brien about the manner in which the shield
168 rode on that cable?

169 A: No. I mean, it was just — I thought
170 that was the design of the door. That never
171 entered my mind that there would be any sleeve that
172 should be there or anything.

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Page 29

173 Q: Did you have any discussions with
174 Mr. O'Brien about replacing the shields or getting
175 a different type of safety guard?

176 A: No, because I never knew — I would
177 never think anything would be available other than
178 what was on. I thought that was it

179 Q: Now, when you replaced the three
180 cables on the left-hand door, did you also replace
181 the shield?

182 A: Yes.

183 Q: So when you left the plant in
184 September of 1997, after performing your work, to
185 your knowledge, the left-hand door had all three
186 shields in place?

187 A: Yes

188 Q: Let me see if we have that work

189 order, I think I have marked that as Resch-1
190 Here it is. I am going to show you what's been
191 previously marked as Resch Exhibit 1

192 Tell me if that is the

193 document that represents the invoice for the work
194 you performed on that occasion.

195 A: Yes. That's my writing down in the
196 left-hand corner, and that's stating what I did

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*William Resch
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10 MR. ABELL: Could I ask
11 you to sharpen that question
12 whether they are similar or
13 whether they are identical?

14 BY MR. POPILOCK:

15 Q: Do they look the same? Do they look
16 different? Do they look similar?

17 MR. DEVLIN:

18 Substantially similar

19 THE WITNESS: Just from
20 the outside, just this part and
21 this part. This part wasn't
22 there

23 MR. POPILOCK: All

24 right

25 BY MR. POPILOCK:

26 Q: Now, you have pointed to Exhibit-B —

27 A: What I explained, the 90 degree plate
28 with the pipe sticking out of it

29 Q: There is an angle iron on the outside
30 with a pipe that sticks out of it that would accept
31 the area where the cable goes through?

32 A: The cable goes through, correct

33 Q: And then on the inside, there is a

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34 circular collar as well that's actually welded to
35 the angle iron

36 Do you see that in these
37 exhibits?

38 A: Yes

39 Q: And you are telling us that the
40 collar on the inside was not attached to the angle
41 iron when you saw them in October of 1997?

42 A: They weren't even there. They were
43 nonexistent. It was just this, just the bent plate
44 and the piece of pipe. The inside collar was
45 nonexistent

46 Q: So you had occasion to fully see the
47 area underneath the angle iron, correct?

48 A: I didn't physically recall looking
49 underneath it, but changing the cables, you could
50 pick the guard up, whereas, if it had the collar on
51 it, you would not be able to pick the shield up at
52 all. Do you understand?

53 Q: I do. So in October of 1997, you
54 were there to change cables?

55 A: Correct

56 Q: And you recall on that occasion when
57 you were changing the cables that you were able to

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58 take the angle iron and slide it up the cable?

59 A: Correct

60 Q: So it wasn't actually attached to the
61 drum?

62 A: That's correct.

63 Q: That turns, winding the cable around
64 it, is that right?

65 A: That's correct.

66 Q: And that was true for all six cables
67 and all six guards?

68 A: I don't recall that on all of them

69 Q: Do you remember how many cables you
70 changed or replaced in October of 1997?

71 A: No, I don't.

72 Q: If you look at your invoice or your
73 ticket, does that help refresh your recollection at
74 all as to how many cables you replaced?

75 A: No, it doesn't.

76 Q: Do you remember which of the six
77 cables you replaced? Do you have any recollection
78 replacing one, in particular?

79 A: It was the left side door

80 Q: If you are standing inside the
81 building?

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82 A: Inside looking out, left side

83 Q: You remember working on that door at
84 least?

85 A: I remember the middle — one of them
86 being the middle cable. As far as how many other
87 cables, I don't remember.

88 Q: And as you look at the three exhibits
89 of A, B and C, the guards that you have in front of
90 you here on the table, are you able to tell me at
91 least from the outside angle iron which of the
92 three most resemble the one you observed in October
93 of 1997? They are slightly different.

94 A: Well, the outsides are the same

95 MR. DEVLIN: The
96 outsides are the same, because
97 they are angling?

98 THE WITNESS: That's
99 all it was.

100 BY MR. POPILOCK:

101 Q: If you look at the piping as well,
102 one of the pipes has a skirt around it where it
103 meets the angle iron

104 Do you see that?

105 A: Yes.

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121 the top. He's pulling all of the tightness up at
122 the top and not the bottom.

123 Q: Did you ever have to adjust a drum;
124 that is that the drum was not properly set, so
125 that when it rotated, it wasn't starting at the
126 right point to take a door all the way up to bring
127 a door all the way down?

128 A: No.

129 Q: Okay. When you were finished
130 installing the cable, did the door work properly?

131 A: Yes.

132 Q: Okay. Was there any problems that
133 you could see with the door, the operation of the
134 door when you were done in October of '97?

135 A: Not that I had seen, no.

136 Q: Now, showing you Exhibit A, as you
137 sit here today, you have a specific recollection
138 that the shield that was on the left-hand door, as
139 you looked outside, as you were inside the building
140 looking outside —

141 A: Correct.

142 Q: — the drum that you were worked on,
143 the shield that was sitting on that drum had a
144 right angle and it had a pipe that the cable

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145 threaded through, but it had absolutely no collar
146 present?

147 A: Correct.

148 Q: So that you could simply pick the
149 angle iron up and slide it up the cable and if
150 necessary, drop it down again?

151 A: Correct.

152 Q: It just floated on the cable, it was
153 not attached to the drum in any manner?

154 A: Correct.

155 Q: Okay. Now, when you went out in
156 January of — I am sorry. It was Resch-3. Let me
157 get the right date. January 17, 2002.

158 Do you have a copy of that?

159 A: Yes.

160 Q: Can you take a look at the order
161 that's in front of you? It indicates that the date
162 — it looks like it's computer printed up there.
163 It says January 3, 2002, and underneath it says
164 January 17, 2002.

165 Do you know why there is a
166 difference of those dates? Do you need me to point
167 that out to you?

168 A: The date that's typed in the computer

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169 is probably more likely when the call was taken.

170 Q: Whose handwriting says 1/17/02, Bill
171 and Doug?

172 A: I don't know.

173 Q: And it says M, and there is an X and
174 T and there is an X.

175 Do you know why?

176 A: No, I don't.

177 Q: Do you know whether or not you have a
178 recollection that day of actually traveling to the
179 facility? M stands for mileage?

180 A: Yes.

181 Q: Do you have a recollection of
182 traveling that day?

183 A: I know we had to get there, but as
184 far as — I don't know what you are trying to
185 gather, I don't know.

186 Q: I understood from before what you
187 said was you would always mark your mileage down,
188 and you would mark your travel time down?

189 A: That's all the secretary's
190 handwriting there, or whoever — ours was all done
191 on our time card. We don't write any of this.

192 Q: Now, on this document so that I am

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193 clear, the description of the work "need brake
194 solenoid"?

195 A: Yes.

196 Q: That doesn't refer to any part of the
197 bifold doors?

198 A: No. That's dealing with those doors.

199 Q: Above it, it says, "adjust cables on
200 two bifold doors."

201 That is the work that you
202 performed on the bifold doors?

203 A: That's when I was over, moving the
204 compost and stuff out of the way.

205 Q: Okay. How much compost had built up
206 under the door?

207 A: At that time, I think it was rainy
208 that day and it was real muddy.

209 Q: Quarter inch? Half-inch? An inch?

210 A: Oh, there could be globs of it in the
211 corners of your jambs. It all depends.

212 Q: When you say jambs, what part are you
213 referring to?

214 A: The sides of the doors. When it's
215 open, the actual sides of your opening.

216 Q: And had you ever seen that before

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

* * * * *

JAMIE DOUGLAS,	*	
Plaintiff	*	Case No.
vs.	*	02-4556
SCHWEISS	*	
DISTRIBUTING,	*	
INC., SCHWEISS	*	
BI-FOLD DOORS and	*	
CALDER DOOR AND	*	
SPECIALTY CO.,	*	
Defendants	*	

* * * * *

DEPOSITION OF
DOUGLAS HERR
MARCH 28, 2003

CCV

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1 existence or non-existence of cable
 2 shields or guards on the doors?
 3 AJ don't understand. You mean
 4 just here recently or ---?
 5 QAt any point in time have you
 6 discussed with your co-employees at
 7 Calder whether there were cable
 8 shields on the doors at any time?
 9 AJ hope I'm getting this right.
 10 ATTORNEY ABELL:
 11 If you don't understand
 12 the question, just tell him
 13 you don't understand the
 14 question.
 15 AJ don't understand the
 16 question.
 17 BY ATTORNEY POPILOCK:
 18 QAll I want to know is, at any
 19 point in time, including up through
 20 today have you ever talked with your
 21 co-employees at Calder about whether
 22 there were cable shields on those bi-
 23 fold doors at any time?
 24 A Yes.
 25 QAll right. And who have you

1 He wants you to exclude
 2 any discussions that I was in
 3 attendance.
 4 A.Well, if you're just saying we
 5 just talked about them. I mean, it
 6 wasn't a big deal. See, I wasn't
 7 there before so I didn't understand
 8 any of that. But I'm going to stop
 9 babbling.
 10 BY ATTORNEY POPILOCK:
 11 QThat's okay. I just want to
 12 know --- I know you've had two
 13 occasions now to drive up at least in
 14 the car with Mr. Calder and your co-
 15 employees. Did the conversation
 16 about the cable guards come up during
 17 those trips?
 18 A.No, not that I can remember.
 19 Q.When was it then that you
 20 talked with these guys about these
 21 cable guards?
 22 AJ have no idea. I see what
 23 you're trying to ask me, but I don't
 24 know.
 25 QDo you remember what they told

1 down the
 2 pulled the
 3 QAnd w
 4 2001?
 5 A.To the l
 6 was. As
 7 good on
 8 QAnd di
 9 these oth
 10 Jay and
 11 with the
 12 discuss t
 13 A.Vern w
 14 QAll rig
 15 you?
 16 AUh-huh
 17 Q.Was th
 18 A.Yes. I
 19 Q.How al
 20 A.No, the
 21 Q.Did yo
 22 you four
 23 cable gu
 24 AJ don't
 25 it. There

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1 talked to about that?
 2 AJ would say the service guys
 3 QCan you give me some names?
 4 A.Don, Vern.
 5 Q.Vern?
 6 AUh-huh (yes). Vern, I'm
 7 sorry.
 8 QAnyone else?
 9 AJ think basically we all ---.
 10 Don, Vern, Jay
 11 QHow about Bill?
 12 A.And Bill, yeah. He's my
 13 partner, yes.
 14 QAnd were you all discussing
 15 the cable shields together or have
 16 you had separate conversations with
 17 each of these people?
 18 A.One more time.
 19 QHave you had discussions with
 20 each of these four people separately
 21 about the cable guards or have you
 22 discussed them generally as a group?
 23 How did these conversations come
 24 about?
 25 ATTORNEY ABELL:

1 you about the cable guards?
 2 AJ know what they were like
 3 when I was there.
 4 QI understand. I'm trying to
 5 separate out what you did when you
 6 were there from what others may have
 7 told you that they did or what they
 8 saw.
 9 A.Three before?
 10 QRight. And in those
 11 conversations that you had with Don
 12 and Vern and Jay and Bill, what did
 13 they tell you that they knew about
 14 these cable guards?
 15 A.Basically the same thing that
 16 I knew.
 17 Q.Which is what?
 18 A.That you could pick them right
 19 up off the spool.
 20 QAll right. And how do you
 21 know that?
 22 AJ changed it.
 23 QAll right. And when did you
 24 first see the cable guards?
 25 A.When Vern dropped the cables

1 I went to d
 2 no need t
 3 Q.Have t
 4 they exp
 5 the abilit
 6 down the
 7 A.Had the
 8 Q.Yes.
 9 A.Yes.
 10 Q.When
 11 AJ guess
 12 know.
 13 Q.Was it
 14 filed?
 15 A.Well, a
 16 Q.And y
 17 you rem
 18 2001 you
 19 the cabl
 20 AJ didn't
 21 I just kno
 22 Q.Did th
 23 after the
 24 what the
 25 cable gu

EXHIBIT 2

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June 18, 2003

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Attention: Richard T. Abell, Esq.

Re: Douglas v. Schwiess v.
Calder Door & Specialty Company
Your File No. 7855-352
Our File No. Q-6055

Dear Mr. Abell:

In accordance with your request, the writer has reviewed file material pertaining to the captioned matter. In addition, on 2/13/03 the writer traveled to the Modern Mushroom facility in Toughkenamon, Pennsylvania and inspected the door system involved in the captioned matter. Photographs numbered 1 through 34, taken during this inspection, were previously forwarded to you for information and general reference.

The specific file materials reviewed include:

- Transcript of deposition testimony of Bruce Broomall;
- Transcript of deposition testimony of Richard O'Brien;
- Transcript of deposition testimony of Howard Flad;
- Transcript of deposition testimony of Arturo Illas;
- Transcript of deposition testimony of William Recchiuti;
- Transcript of deposition testimony of William Resch;
- Transcript of deposition testimony of Jay Shertzer;
- Transcript of deposition testimony of Douglas Herr;
- Transcript of deposition testimony of George Calder;
- Transcript of deposition testimony of Donald Geib;
- Transcript of deposition testimony of Verner Phipps;

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Calder Door & Specialty Company
June 18, 2003
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- Transcript of deposition testimony of Michael Schweiss;
- Deposition exhibits;
- Various exemplar bi-fold door drum guards;
- Plaintiff's Answers to Interrogatories;
- Calder Door & Specialty Company's Answers to Interrogatories;
- Schweiss Distributing's Answers to Interrogatories.

The inspected door was one of two, large, overhead, vertically bi-folding doors serving an equipment shed building identified by Modern Mushroom as the "pre-wet building". The subject door was located on the left as observed from inside the building. It measured approximately 23 feet in height by 32 feet in width and was essentially comprised of two panels measuring approximately 11-1/2 feet tall by 32 feet wide connected by hinges in a vertical arrangement and suspended from the door header by means of hinges. Roller wheels were provided at the lower left and right corners of the door, which guided the door bottom vertically along steel channels located on the left and right sides of the doorframe. The door opened and closed in power operation by means of a 1.0 horsepower electric motor with an electric brake; a reduction gear drive; and a jackshaft and winding drum/cable system. The motor, drive and jackshaft system were located on the interior side of the door near the bottom edge and moved upward and downward during door opening and closing. The door was provided with three, approximately 3/4-inch diameter cables that were affixed to the door frame header at equal lateral spacing. At the time of the inspection, the door was operated by means of up and down continuous pressure buttons. Motion of the door upward and downward was effectuated by the motor turning the jackshaft and causing the drums to wind the cable up to lift the bottom of the door upward or pay out cable to allow the door to move downward. As the bottom edge of the door moved upward to open, the hinge between the two door panels moved outward and the two panels folded. At the time of the inspection, the interior side of the door was coated with thermal insulation material that appeared to have been sprayed onto the door. The subject door was manufactured by Schweiss Automatic Bi-fold Doors of Fairfax, Minnesota (Schweiss).

Specific attention was paid to the jackshaft and winding drum system during the inspection. The jackshaft was essentially an approximate 1-1/4 inch diameter solid steel shaft located near the bottom edge of door that functioned to drive the three winding drums at the bottom of the cables. The drums measured approximately 3 inches in diameter by 12 inches in length and wound cable (i.e., upon opening of the door) in a direction such that the top of the drum moved away from the door panel and the bottom moved toward the door panel and the cable spooled onto the front of the drum (i.e., on the side away from the door panel). At the time of the inspection, the nip points between the cables and the drums of the jackshaft system were covered with sheet metal guards. The guards were essentially composed of light gauge sheet metal formed into a 90-degree angle of approximately 7 inches in height by 5 inches in depth by 7 inches in width. Each guard was provided with a short section of approximate 1/2 diameter tubing through which the cable passed. The guards were engaged with their respective drums by

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means of circular steel collars that were diametrically split and provided with a hinges and threaded fasteners for purposes of installing them around the drums. The remaining portions of the rotating jackshaft remained unguarded.

At the time of the inspection, a warning sign measuring roughly 8 inches tall by 11 inches wide was located on a side of the door frame, approximately 5 feet above the ground. The warning included a pictogram depicting a person positioned underneath the closing door. The sign indicated:

*"Stand Back!
Door Could Crush You!
Stand Away While Closing or Opening."*

*"Warning:
To prevent entrapment - Do not start door downward unless doorway is clear."*

Important Safety Information

Bi-fold doors are very heavy. These doors are under extreme tension and can exert strong forces. Improper use or maintenance of this door could lead to severe injury or death.

Adhere to the precautions given below:

- 1. Keep the door in full view and free of obstructions while operating.*
- 2. Do not allow children to operate door, including its electrical controls.*
- 3. Avoid standing in or walking through doorway while it is moving.*
- 4. Unlatch the side latches before operating the door.*
- 5. Never leave the electrical controls while door is operating.*
- 6. Visually inspect the door and its hardware monthly for worn or broken parts and out of adjustment conditions.*
- 7. Keep the cables the proper tension & in good condition.*
- 8. Call a competent service person from a qualified door agent for adjustments, repairs and periodic maintenance as recommended by the manufacturer."*

It is understood, based upon file material reviewed, that some changes were made to the door between the time of the accident and the time of the inspection. It is indicated that the door control at the time of the accident included momentary pressure, UP, DOWN and STOP buttons. This control would move the door in the upward or downward direction until it reached its respective travel limits upon momentarily pressing the UP or DOWN button and thus would allow the operator to walk away from the control. In addition, the door was provided with blanket insulation that was held in place between exterior sheeting and the frame of the door panels.

It has been reported that on 1/14/01 Mr. Jamie Douglas was employed by Modern Mushroom as an equipment operator at their Toughkenamon, Pennsylvania facility. Reportedly,

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at approximately 3:30 -4:00 AM on said date, Mr. Douglas sustained injury when his hand became caught in a nip point formed between a winding drum and cable on the subject bi-fold door. It is understood that Mr. Douglas was separating some insulation material from the cable and/or drum when his hand became caught. This occurrence and the resulting injury to Mr. Douglas serve as the basis of the captioned matter.

Evidence indicates that the subject door was installed by Schwiess in 1996. Evidence further indicates that Calder Door and Specialty Company (Calder Door) had occasion to service the subject bi-fold doors at the request of Modern Mushroom. Service records indicate that Calder was called on several occasions between 09/22/97 and 04/03/98 to replace bi-fold door cables and make other adjustments.

Several Modern Mushroom employees testified in deposition (Richard O'Brien, Bruce Broomall, Howard Flad, Arturo Illas and William Recchiuti) with regard to the subject occurrence. These witnesses generally related that the "*pre-wet building*" was originally provided with sliding doors, which proved to be problematic and thus resulted in the installation of the subject Schwiess bi-fold doors. These witnesses further related that they experienced some problems with the subject bi-fold doors, specifically that the cables would become frayed and there was at least one occasion in which a drum guard became entangled in the cable and was damaged, which prompted them to manufacture their own guards. They indicated that the original drum guards were provided with continuous collars around the drums such that their removal would require cutting the collars off. The replacement guards (both the ones made by Schwiess and the ones made by Modern Mushroom) incorporated a split and hinged collar to facilitate installation and removal of same. Mr. Recchiuti stated that the original thermal insulation began falling from the door. Mr. O'Brien testified that Schwiess had recommended the bottom drive configuration door. Mr. O'Brien indicated that rewiring the controller from a momentary pressure operation to a continuous pressure operation, which was performed after the accident, required approximately 10 minutes. Mr. O'Brien further indicated that there were no drum guards on the doors at the time of the accident and that Calder had removed the guards. It is noted, however, that Modern Mushroom witness testimony varies with respect to the number of removed guards and the timeframe of their removal.

Representatives of Calder Door (George Calder, Douglas Herr, Donald Geib, Verner Phipps, Jay Schertzer and William Resch) testified in deposition regarding the subject matter. These witness essentially asserted that they had never permanently removed any of the drum guards on the bi-fold doors at Modern Mushroom. The Calder witnesses who specifically recall the guards present on the doors during cable replacement work performed in the 1997/1998 time frame indicate that the guards were not affixed to the drums by means of a collar, but rather were fit around the cable and rested atop the drums such that they were free to slide up and down along the cable. While these witnesses indicated that they had opportunity to change cables for the subject doors prior to the accident, they stated that did not provide the cable and that they

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Calder Door & Specialty Company
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replaced any guards that needed to be removed to change cables. In addition, some Calder witnesses testified that they had occasion to make adjustments to cable tension and limit switches on Modern Mushroom's bi-fold doors.

Mr. Michael Schweiss, owner of Schweiss Distributing, Inc., testified in deposition that the company was founded in 1994 and that the bi-fold doors they manufactured at that time were equipped with drum guards. Mr. Schweiss provided a sketch of the first drum guard designed by Schweiss, which included a collar that fit around the drum, an integral cable guide tube and a 3-sided sheet metal cowling that fit atop same without being affixed to the collar or guard. Mr. Schweiss explained that the base model doors were generally bottom drive units with no electrical safety features. He indicated that Schweiss offers a bi-fold door with an overhead drive, which, for various reasons, represented the minority of Schweiss bi-fold door sales. In addition, for an additional cost, customers can opt for various safety features including electric photo eye sensors, continuous pressure switch operation (i.e., dead man switch) and door base safety edge. Mr. Schweiss explained that both the safety edge and electric eye could be configured to either stop door motion or reverse its direction. Mr. Schweiss described that the standard door insulation is blanket type batting without interior sheeting or backing, but Schweiss does offer optional hardboard insulation or interior sheeting material to cover the blanket batting. Mr. Schweiss further described that some doors having larger diameter drums are provided with drum guards that include a collar around the drum and a cable guide tube but do not have any sheet metal cowling.

Evidence indicates that there have been numerous drum guard designs for Schweiss bottom drive bi-fold doors. Mr. Schweiss described the first design as having a collar, a guide tube and a 3-sided sheet metal shield that was not affixed to either the collar or tube. Additionally, Mr. Schweiss described that guards were produced that included only the drum collar and cable guide tube. Mechanical drawings produced by Schweiss depict two additional designs that are essentially the same except for the provision of a solid collar and a split collar. Further, the writer was provided with three exemplar guards, two of which were reportedly manufactured by Schweiss, but differ from the aforementioned mechanical drawings and one that was reportedly manufactured by Modern Mushroom.

File material indicates that approximately 2 years and 9 months transpired between the time Calder Door last performed work on the Modern Mushroom bi-fold doors and the time of the subject accident. In addition, records indicate that Modern Mushroom had ordered six 1/4-inch cables and six replacement drum guards one day after the subject accident.

Based upon file materials reviewed, inspection of the subject door, examination of exemplar cable drum guards and the foregoing, it is the writer's opinion that the subject 1/14/01 accident and resulting injury to Mr. Douglas did not result from any impropriety or shortcoming on the part of Calder Doors. Calder neither manufactured nor installed the door. Evidence does

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not support that Calder Door performed door service that had any causal relationship to the subject accident.

Evidence does not support any allegation that Calder Doors removed the drum guards on the subject bi-fold doors. All of the Calder service technicians that had opportunity to work on the subject doors testified that they did not remove the guards. In addition, the Calder service technicians indicate that the guards were free to slide up and down along the cable from the drum, which is consistent with the type of guard described by Mr. Schwiess as being the original design. Considering that the original equipment would have been provided with guards having continuous collars (i.e., as opposed to split collars), removal of the collars and associated cable guide tubes would require cutting the collar with either an acetylene torch or an abrasive saw, which is a fairly laborious and time-consuming task. None of the Calder Door representatives testified that they had cut or burned any hardware from the subject doors. Rather, the only witness who specifically recalled removing a guard with the use of "zip cutter" was the Modern Mushroom welder Arturo Illas.

Calder Door was not under contract with Modern Mushroom to provide maintenance for the subject bi-fold doors. Rather, Modern Mushroom called Calder Door to perform specific tasks. Review of Schwiess literature pertaining to their bi-fold door reveals that the doors require a significant amount of maintenance, much of which pertains to the condition and tension of the lift cables. There is evidence of one or more drum guards being damaged as a result of being wrapped up with its associated cable, which is likely the result of either a frayed or overly slack cable condition.

It is the writer's further opinion that the subject bi-fold door, as designed, manufactured and installed by Schwiess, had significant safety deficiencies that rendered it unsafe for its intended use, which condition resulted in the subject accident. In the writer's opinion, Schwiess failed to exercise reasonable engineering safety protocol in the design of the subject bi-fold door, which resulted in a product that was devoid of the common and readily available safeguards required to make it reasonably safe.

While it may have certain desirable marketable features, provision of a bottom drive unit on a bi-fold door (as opposed to a top mounted drive system) introduces unique hazards to persons located in the vicinity of the door while same is opening or closing. During closing, there is a risk of entrapment, which is common to most power operated doors. However, the risk of entrapment for a bi-fold door is more significant than for other type doors due to relatively large size and associated weight of bi-fold doors and their lack of counterbalancing. During opening, bottom drive bi-fold doors have a unique hazard in the potential for persons to contact various moving parts including three winding drum nip points. In either direction of operation, bi-fold doors pose a significant risk of crushing injury to persons in the doorway in the event of suspension system failure. As such, the subject door has a higher potential for significant

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personal injury than other type power operated overhead doors. Accordingly, the subject door requires a greater degree of safeguarding. Typical safeguards for power operated overhead doors included continuous pressure controls, a bottom edge sensor and a photo eye sensor, all of which could readily have been implemented by Schwiess at the time the subject door was manufactured and, in fact, were offered as additional cost safety features. In the writer's opinion, the provision of one or more of the aforementioned safety items as standard equipment was required to make the subject bi-fold door reasonably safe and suitable for its intended use.

The safety standard that is most applicable to the subject bi-fold door is Underwriters Laboratories Standard for Door, Drapery, Gate, Louver, and Window Operators and Systems (UL 325). The standard indicates in paragraph 1.5 under the subtitle "Scope":

"A product that contains features, characteristics, components, materials, or systems new or different from those covered by the requirements in this standard, and that involves a risk of fire, electric shock, or injury to persons shall be evaluated using the appropriate additional component and end product requirements as determined necessary to maintain the acceptable level of safety as originally anticipated by the intent of this standard."

The standard also includes a hierarchy of measures to prevent personal injury resulting from operation of industrial or commercial doors, giving the highest priority to continuous pressure controls. The effectiveness of continuous pressure controls in preventing persons from making contact with moving power operated overhead doors is clearly recognized by interested parties. In the writer's opinion, considering the greater risk of personal injury associated with bottom drive bi-fold doors relative to other type power operated doors, continuous pressure controls are requisite to reasonably safe operation of such doors. Provision of continuous pressure controls and/or a photo eye sensor on the subject door would have prevented the 1/14/01 accident occurrence. Provision of a safety edge sensor on the door would have given Mr. Douglas a means of preventing the accident or mitigating the resulting injuries. In the writer's opinion, Schwiess' failure to provide any of the aforementioned safeguards as standard equipment constitutes a deviation from the normal practice of safe design and rendered the subject door defective. It is noted that continuous pressure controls could readily have been incorporated as standard equipment at negligible additional cost and would have ensured continued product safeguarding in the foreseeable event that barrier guards be removed.

In the writer's opinion, the drum guards provided with the subject door (and their subsequent replacements) do not provide adequate safeguarding of the jackshaft and the associated nip points. The guards do not prevent access to the nip points and do not cover the rotating jackshaft as required by the Safety Standard for Mechanical Power Transmission Apparatus (ANSI B15.1). Said standard requires that the entire jackshaft be covered in a manner that prevents entry of "hands, fingers or other parts of the body into a point of hazard by

Re: Douglas v. Schwiess v.
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June 18, 2003
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reaching through, over, under or around the guard." It is evident, based on the number of "*trial and error*" drum guard design iterations and the apparent chronic problems with same, that Schwiess was aware that the drum guards were not effective.

Furthermore, the removal of drum guards by the end user is highly foreseeable, as is evidenced by Schwiess' production of replacement guards in anticipation of their removal. Because of the foreseeability of drum guard removal and the high potential for injury to persons in the doorway, the subject door required a positive means of preventing persons from being near the door during operation to make the door reasonably safe. As indicated above, the most effective, most widely utilized and most readily implemented means of positively preventing operators from being near the door during its operation is the use of continuous pressure controls. Provision of a photo eye sensor and/or a bottom edge sensor is another common means of safeguarding both the operator and others from the hazards associated with bi-fold doors with or without continuous pressure controls. In the writer's opinion, both effective guarding of the jackshaft and provision of some form of electrical safeguard as standard equipment were required to make the subject door a reasonably safe product. By utilizing an incomplete and ineffective guarding system, the removal of which was readily foreseeable and even anticipated, and not incorporating any electrical safeguards as standard equipment, Schwiess provided a defective product, which defective condition resulted in the subject accident.

It is the writer's concluding opinion that the subject 1/14/01 accident and resulting injury to Mr. Douglas did not result from any improper action or inaction on the part of Calder Door & Specialty Company. Had Schwiess exercised reasonable engineering design judgment and provided a door having reasonable, customary and readily incorporated safeguards, consistent with the requirements of applicable safety standards, the subject accident would have been avoided. As indicated above, removal of the drum guards on the subject door was foreseeable; Schwiess was aware that guards were likely to be removed by end users; and, in the writer's opinion, the subject door required electrical safeguards to make it reasonably safe, regardless of the existence and/or effectiveness of the guards.

Please feel free to contact the writer should further discussion or information be required.

Very truly yours,



William J. Meyer, P.E.
Engineering Consultant

WJM/mfn

EXHIBIT 3

In The Matter Of:

*Jamie Douglas v.
Schweiss Distributing, Inc., et al*

*William Resch
March 11, 2003*

*Brusilow & Associates
1926 Arch Street
1st Floor West
Philadelphia, PA 19103-1404
(215) 977-9700 FAX: (215) 977-9773*

*Original File RESC0311.V1, 135 Pages
Min-U-Script® File ID: 0503589198*

Word Index included with this Min-U-Script®

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Q: Do you recall ever having encountered any problems with the bi-fold doors for the work that you performed?

MR. ABELL:

Encountering problems in completing that day or any problems at all?

MR. POPILOCK: Any problems at all

THE WITNESS: Other than the time I went down to work on the dock doors and I told them I will send someone else down to do it, no

BY MR. POPILOCK:

Q: Do you have that Calder Door has any type of safety role when they are performing maintenance on the doors?

A: What do you mean by that?

Q: If you encounter what you feel to be a safety concern for one of the doors, do you feel that you have any role in informing the owner about that safety concern?

A: As far as fixing the safety problem,

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Page 81

we will fix it. I mean, we are not going to do something intentional or as far as if there is a safety issue, we will fix it

Q: For example, if you get a call from a customer that they want a cable that has snapped on a door to be replaced and you get there and you are performing your work and you see something else that's wrong with the door that you consider to be a safety concern, is that something that you would typically raise with the customer?

A: We would fix it, and then when the customer comes out, let them know, Hey, this was something else that was wrong, so we fixed that for you, too, while we were here.

Q: And then they would be billed for that?

A: Correct

Q: I might have asked you this earlier, and I apologize if I am repeating myself.

On the occasion when you were there in October of 1997, do you recall any of the guards or shields being missing from any of the cables?

A: No. I don't. I believe they were all

there.

Q: When you left the job site on October 26, 1997 were the guards that were in place on the cables still there? Did you leave them on the cables, the new ones? That was a bad question

Did you leave the guards on the new cables that you installed on the date when you performed that work in 1997?

MR. DEVLIN: I have an objection to the form. He said he only recalls doing one cable.

You are saying cables

MR. POPILOCK: Okay.

BY MR. POPILOCK:

Q: When you replaced the cable that you recall replacing in October of 1997, do you recall putting the shield back on that was in place when you arrived?

A: Yes.

Q: Do you ever recall taking any shields off and not replacing them?

A: No.

Q: Have you ever had any discussions with anyone at Calder as to whether that has taken

place?

A: No.

Q: Has anyone at Calder ever told you that they have encountered the same type of shield that you were describing earlier that did not have the collar on the inside that would go around the drum?

A: At what time? Before the accident?

Q: At any time

A: Well, sure, we all remember some of the shields lifting up

Q: You have had discussions with other Calder employees about what these shields looked like?

A: Yes.

Q: And who did you have these discussions with?

A: With Vern and Don and Doug.

Q: Vern, Don, and Doug?

A: Yes

Q: And each of them also remember a shield similar to the one you described earlier that could be moved up and down the cable?

A: I do not know if Doug does, but Don

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(1) the inside?

(2) A: Yes.

(3) Q: Okay Where did you see them?

(4) A: Right here in front of me.

(5) Q: All right.

(6) A: And the photographs, also.

(7) Q: All right. The photographs that you
(8) reviewed with counsel?

(9) A: Yes.

(10) Q: And other than that, that was the
(11) first time that you had seen them with the collar
(12) on the inside?

(13) A: Yes.

(14) Q: When you visited the plant in October
(15) of 1997 did you review any manuals for the
(16) operation or maintenance of the doors?

(17) A: No.

(18) Q: Do you recall operating the doors in
(19) October of 1997?

(20) A: Yes, I do.

(21) Q: And what do you recall about that?

(22) A: The push-buttons for the motors were
(23) right there beside the — in between the two doors
(24) on a center post.

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(1) Q: And, as you are in the inside looking
(2) out, there is a door on the left and a door on the
(3) right, and in between the two doors, there is a
(4) part of the building?

(5) A: Correct.

(6) Q: And you recall the two controllers
(7) for the doors being in this area between the two
(8) doors?

(9) A: Yes.

(10) Q: Do you recall anything unusual in the
(11) manner in which these doors operated when you
(12) activated the controller?

(13) A: I don't recall that, I don't
(14) remember.

(15) Q: Do you recall having a feeling at all
(16) about these doors, about the size of them, about
(17) the manner in which they operated, about the safety
(18) of them when you first encountered them in October
(19) of 1997?

(20) A: Do you mean just looking at them?

(21) Q: Or operating them.

(22) A: I thought they were pretty
(23) impressive, but other than that, it's a door.

(24) Q: Did you have any safety concerns at

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(1) all in the manner in which the doors operated when
(2) you performed maintenance on them in October of
(3) 1997?

(4) A: My safety concerns as far as?

(5) Q: As far as the doors having the cables
(6) snap, as far as the shields being inadequate, any
(7) concerns at all that you recall having in your

(8) mind?

(9) A: Not really.

(10) Q: Have you ever been asked to remove
(11) any type of safety device when you were ever on a
(12) job?

(13) A: No.

(14) MR. ABELL: I assume

(15) you mean remove and not replace
(16) it by the end of the service?

(17) MR. POPILOCK: Exactly.

(18) BY MR. POPILOCK:

(19) Q: If you were asked by a customer to
(20) remove any type of safety device and not replace
(21) it, is that something that you would do, if
(22) requested?

(23) A: Personally, no.

(24) Q: Do you know if there is a company

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(1) policy concerning that?

(2) A: Not offhand, but if I know George,
(3) there probably is one.

(4) Q: Do you recall generally the condition
(5) of the hating on the inside of the door in October
(6) of 1997?

(7) MR. ABELL: By hating,
(8) do you mean installation?

(9) MR. POPILOCK: Yes.

(10) THE WITNESS: I

(11) remember it being in — other
(12) than it being in rough shape,
(13) no.

(14) BY MR. POPILOCK:

(15) Q: Do you recall it being in rough
(16) shape?

(17) A: As far as there might have been some
(18) places where the insulation was torn.

(19) Q: Do you have a specific recollection
(20) of that?

(21) A: Not offhand, no.

(22) Q: Did you make any recommendations to
(23) the owner concerning replacement of that
(24) insulation?

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

* * * * *

JAMIE DOUGLAS,	*	
Plaintiff	*	Case No.
vs.	*	02-4556
SCHWEISS	*	
DISTRIBUTING,	*	
INC., SCHWEISS	*	
BI-FOLD DOORS and	*	
CALDER DOOR AND	*	
SPECIALTY CO.,	*	
Defendants	*	

* * * * *

DEPOSITION OF
JAY SHERTZER
MARCH 28, 2003

COPY

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Sargent's Court Reporting Service, Inc.
(814) 536-8908

1 others from Calder Door and you had
 2 performed work on the doors, did
 3 other individuals from Calder work on
 4 the limit switches?
 5 A I don't recall. I really
 6 don't.
 7 Q You don't remember one way or
 8 the other?
 9 A One way or the other I don't
 10 know.
 11 Q Did anyone at Calder Door ever
 12 tell you that they removed the cable
 13 guards from these bi-fold doors?
 14 A No.
 15 Q Now, you came up to your
 16 deposition today with Mr. Calder and
 17 is it Mr. Herr?
 18 A Yes.
 19 Q And you drove up together?
 20 A Yes.
 21 Q Did you come up the last time
 22 for the deposition?
 23 A No, I did not.
 24 Q On your way up here today did
 25 you discuss what your deposition was

1 that.
 2 Q Why's that?
 3 A Well, it's a pain in the neck.
 4 It's a pain in a neck place. This
 5 place stinks, it's dirty, it's
 6 filthy. And you never can go there
 7 and get in and out in five minutes.
 8 I mean, it's always, you know, an
 9 hour, hour and a half, two hours.
 10 It's just a pain in a neck door to
 11 work on.
 12 Q And I guess that's what I need
 13 to know. Why is it a pain in the
 14 neck to work on, besides the facility
 15 being dirty and smelly? Is there
 16 something about the door itself that
 17 makes it difficult to work on?
 18 A Well, it's not that it's
 19 difficult, it's just time consuming.
 20 we like to do everything in five
 21 minutes and go home and take a nap.
 22 ATTORNEY POPILOCK:
 23 I don't have any other
 24 questions.
 25 A I'm not trying to be smart.

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1 going to be about?
 2 A Briefly. I mean, you have to
 3 understand one thing, since I found
 4 out about this, this thing has gone
 5 through my mind a million times. I
 6 mean, of course we talk about it.
 7 Q Has any of the other Calder
 8 Door employees told you something
 9 that didn't coincide with what your
 10 recollection was concerning service
 11 of the doors?
 12 A No.
 13 Q Did you review any deposition
 14 transcripts?
 15 A No.
 16 Q Did you talk with Don and Dong
 17 about times when you were out there
 18 doing the work?
 19 A I don't know. Do you mean
 20 recently?
 21 Q Yeah. Since the lawsuit has
 22 been filed. Have you guys talked
 23 about ---?
 24 A Yeah, we talk about. We all
 25 hate the damn door and stuff like

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1 RE-EXAMINATION
 2 BY ATTORNEY DEVLIN:
 3 Q Jay, I just have a couple
 4 follow-up questions. Your Counsel
 5 has handed us some Answers to
 6 Interrogatories this morning and I
 7 don't believe they were marked. I'd
 8 like to mark them.
 9 (Shertzer Exhibit Four
 10 marked for
 11 identification.)
 12 BY ATTORNEY DEVLIN:
 13 Q I'd like to put this in front
 14 of you.
 15 ATTORNEY ABELL:
 16 Before you ask that
 17 question. Even though it's
 18 the first time it's marked,
 19 I'd like the record to show
 20 that it was shown to him and
 21 asked questions of the witness
 22 by Mr. Popilock.
 23 ATTORNEY DEVLIN:
 24 Yes.
 25 BY ATTORNEY DEVLIN:

In The Matter Of:

*Jamie Douglas v.
Schweiss Distributing, Inc., et al*

*Donald Getb
March 11, 2003*

*Bruslow & Associates
1926 Arch Street
1st Floor West
Philadelphia, PA 19103-1404
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Min-U-Script® File ID: 3274504234*

Word Index included with this Min-U-Script®

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101 objection. He said he only saw
102 a couple of frays sticking out
103 on a cable.

104 Go ahead, sir. You can

105 answer.

106 THE WITNESS: Did you
107 have a question? Sorry.

108 BY MR. POPELOCK:

109 Q: Did you see fraying on more than one
110 cable?

111 A: Not that I recall. I mean, when I
112 seen that and he said he wanted the cables
113 replaced, I mean, we just went ahead and did the
114 job he requested. And that was pretty much it.

115 Q: Did you have any discussion with
116 Mr. O'Brien as to what might have been causing the
117 fraying of this cable?

118 A: No, because I have seen cables fray
119 on sectional doors. I mean, this is just — they
120 break down sometimes. I never — it didn't seem to
121 alarming to me.

122 Q: Now, when you operated the door did
123 you observe how this guard would move as the door
124 would open or close?

125 A: Yes.

126 Q: And what would the guard do when the
127 door was opening?

128 A: Well, with that cable coming down
129 through the pipe, it just rode across the drum at
130 the speed that that cable revolves around that
131 drum, as it winds it up.

132 MR. ABELL: The witness
133 is gesturing with his hand from
134 side to side.

135 BY MR. POPELOCK:

136 Q: So the underside of the angle iron
137 would ride on the cable as it wound around the
138 drum?

139 A: Yes.

140 Q: Is that right?

141 A: Yes. And you have — if you have a
142 picture of that drum — the cable built up the drum
143 a little, really, so this was just resting right
144 across that flat surface.

145 Q: Did that appear to impede the ability
146 of the cable to wind?

147 A: No. There is not much weight, that
148 that little thing on there, it sure don't affect

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149 that.

150 Q: In September of 1997 did you have an
151 understanding as to what the purpose of that angle
152 iron was?

153 A: Yes.

154 Q: And what was your understanding?

155 A: It protects something from getting
156 caught in the cable as it wraps around the drum.

157 Q: Did you understand that it was to
158 protect also someone's hands from getting in there?

159 A: Well, I am sure it did enter my mind.

160 But, yeah, that would be common sense. Anything
161 that would get in there, you could not get wrapped
162 around that drum between the drum and the cable.

163 Q: So at least in September of 1997, you
164 understood that shield to be a safety shield?

165 A: Yes.

166 Q: Did you have any discussion with
167 Mr. O'Brien about the manner in which the shield
168 rode on that cable?

169 A: No. I mean it was just — I thought
170 that was the design of the door. That never
171 entered my mind that there would be any sleeve that
172 should be there or anything.

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173 Q: Did you have any discussions with
174 Mr. O'Brien about replacing the shields or getting
175 a different type of safety guard?

176 A: No, because I never knew — I would
177 never think anything would be available other than
178 what was on. I thought that was it.

179 Q: Now, when you replaced the three
180 cables on the left-hand door, did you also replace
181 the shield?

182 A: Yes.

183 Q: So when you left the plant in
184 September of 1997, after performing your work, to
185 your knowledge, the left hand door had all three
186 shields in place?

187 A: Yes.

188 Q: Let me see if we have that work
189 order, I think I have marked that as Resch-1.
190 Here it is. I am going to show you what's been
191 previously marked as Resch Exhibit-1.

192 Tell me if that is the
193 document that represents the invoice for the work
194 you performed on that occasion.

195 A: Yes. That's my writing down in the
196 left hand corner, and that's stating what I did

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

JAMIE DOUGLAS : NO. 02-4556
V. :
SCHWEISS DISTRIBUTING, INC.; :
SCHWEISS BI-FOLD DOORS, INC.; and :
CALDER DOOR & SPECIALTY COMPANY :

- - -

March 27, 2003

- - -

Oral deposition of MICHAEL L.
SCHWEISS, held in the Law Offices of Devlin &
Devine, 100 West Elm Street - Suite 200,
Conshohocken, PA 19428, commencing at 9:15 a.m.,
on the above date, before Judith E. Shaffer, Court
Reporter and Notary Public of the Commonwealth of
Pennsylvania.

- - -

DIAMOND COURT REPORTING
116 HEDGEROW COURT
DEPTFORD, NEW JERSEY 08096
856-232-6903
FAX 856-232-6197

DIAMOND COURT REPORTING

1 A. Never -- yes, I have. I mean, they
2 are always painted the same color as the door. I
3 have painted black doors and I have painted white
4 doors.

5 Q. Has your company ever painted the
6 cable shields a color different than the remaining
7 portions of the door?

8 A. Never.

9 Q. So whatever color the cable shield is
10 is the same color that the door itself is painted?

11 A. Correct.

12 MR. DEVLIN: The original?

13 MR. POPILOCK: Right.

14 MR. DEVLIN: The original cable
15 shields that are assembled there?

16 MR. POPILOCK: Right.

17 BY MR. POPILOCK:

18 Q. This cable shield that we have in
19 front of us here as Exhibit C that you have
20 identified as a Schweiss-manufactured shield has a
21 collar that it is hinged with a flange and a bolt
22 in it.

23 Do you see that?

24 A. Yes.

1 Q. Has your company ever manufactured a
2 collar that has this type of configuration?

3 MR. DEVLIN: This referring to the
4 collar?

5 MR. POPILOCK: Yes.

6 MR. DEVLIN: But he said he
7 manufactured this, Exhibit C.

8 BY MR. POPILOCK:

9 Q. So that includes the interior collar
10 portion?

11 A. This is my replacement shield.

12 Q. Has your company ever manufactured a
13 shield that has a collar of a different
14 configuration?

15 A. Never.

16 MR. DEVLIN: The original? Your
17 original shield?

18 THE WITNESS: I'm sorry. What
19 question do you have?

20 BY MR. POPILOCK:

21 Q. Other than the type of collar that
22 has the hinge and the flange on it with the bolt,
23 has your company ever designed a shield that has a
24 collar of a different configuration?

1 A. I have what comes with every
2 original door has a continuous pipe, no cuts, no
3 hinge on it. It comes standard on every door.

4 MR. DEVLIN: Mr. Schweiss, we have
5 in other depositions have referred to
6 this -- what I am pointing to on Exhibit
7 C -- as a collar. It may be inaccurate but
8 that's for the three of us when we have been
9 talking about the product. This has been a
10 collar, the guide tube -- actually we called
11 it a tube -- so if you refer to the collar
12 as a tube you may just confuse all of us
13 here. But I am sorry we have confused you
14 but that's what we have been referring to as
15 a collar and then this as a guide tube.

16 Am I correct, gentlemen?

17 MR. ABELL: Yes. The tube is the
18 object that on the side of it has the cable
19 and the collar term we have been using that
20 inside it has the drive shaft.

21 THE WITNESS: There are two kinds of
22 collars I have; a solid member, no breaks in
23 it and I have the replacement shield with
24 the break and the hinge on it so it's got

1 two breaks in it.

2 MR. DEVLIN: Would you like me to go
3 down to my office and bring it back?

4 MR. POPILOCK: Sure.

5 (Whereupon, a recess was taken.)

6 MR. POPILOCK: Mr. Devlin has been
7 so kind to get from his office the other two
8 shields that have been marked as Exhibits A
9 and B. I don't even know if they were
10 marked at anybody's deposition.

11 MR. DEVLIN: They were marked at
12 depositions previously.

13 BY MR. POPILOCK:

14 Q. If we look at Exhibit A which is the
15 darker of the two, is this the configuration of
16 the collar you were describing that has a
17 continuous piece of metal?

18 A. Yes, it is.

19 Q. And that's just cut from a tube?

20 A. Yes.

21 Q. And then welded fast to a bracket
22 attached to the angle iron?

23 A. Yes.

24 Q. When you were describing the other

1 BY MR. POPILOCK:

2 Q. Why was it that your company
3 designed both of these type shields at the same
4 time?

5 A. For replacement purposes.

6 Q. So at the time that you were
7 originally designing the shields to be used on
8 cables for Schweiss doors you envisioned a need to
9 replace them at some point?

10 A. Yes.

11 Q. And why was that?

12 A. Let's say you lift the door up with
13 a forklift and you load it onto the install
14 trailer. It can be damaged in our yard or it can
15 be damaged in the customer's yard. It could be
16 damaged when the customer has it at his premises.

17 Q. So if I understand your testimony
18 then, the shield that had the split collar with
19 the hinge and the flange would have been first
20 designed sometime after 1994?

21 A. Yes.

22 Q. Do you know whether original design
23 drawings exist for shields that have the split
24 collar on them?

20

1 original door that went to Modern Mushroom would
2 have been the same as the shield that appears on
3 Schweiss 7?

4 A. Yes.

5 MR. DEVLIN: With the addition that
6 Schweiss 7 doesn't show the third flat
7 shield that he previously said attaches to
8 the tube -- guide, cable guide.

9 BY MR. ABELL:

10 Q. Now, you said before that you
11 started making the split replacement shields at
12 the time you started making the solid color
13 shields?

14 A. Yes.

15 Q. And I believe you said you started
16 making split collar shields because you were aware
17 that the original shields would be damaged?

18 A. Could be damaged.

19 Q. What type of damage were you aware
20 of that had occurred to shields prior to the
21 initiation of this lawsuit?

22 A. When a customer leaves the cables
23 too loose they can get damaged. They have already
24 been damaged by forklifts in loading or unloading

20 1 or installing the door, customers banging into
2 them.

3 Q. You referenced a few moments ago
4 that one of the times that you are familiar with
5 shields becoming damaged is in the original
6 installation that the cable wasn't tightened
7 correctly or the limit switches weren't set
8 properly and that the cable could become wrapped
9 around the shield?

10 A. Yes.

11 Q. Did I understand that?

12 A. Yes.

13 Q. Have you ever been aware of
14 circumstances in which the shield was damaged by
15 the cable wrapping around the shield in
16 circumstances other than the original start-up of
17 the door?

18 A. Yes, from cables being too loose.

19 Q. So you are aware of the fact that
20 customers had let their cables get too loose after
21 the door was in use and the extra slack of the
22 cable eventually wrapped around the shield and
23 damaged it?

24 A. Yes.

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

JAMIE DOUGLAS : NO. 02-4556
V. :
SCHWEISS DISTRIBUTING, INC.; :
SCHWEISS BI-FOLD DOORS, INC.; and :
CALDER DOOR & SPECIALTY COMPANY :

- - -

March 27, 2003

- - -

Oral deposition of MICHAEL L.
SCHWEISS, held in the Law Offices of Devlin &
Devine, 100 West Elm Street - Suite 200,
Conshohocken, PA 19428, commencing at 9:15 a.m.,
on the above date, before Judith E. Shaffer, Court
Reporter and Notary Public of the Commonwealth of
Pennsylvania.

- - -

DIAMOND COURT REPORTING
116 HEDGEROW COURT
DEPTFORD, NEW JERSEY 08096
856-232-6903
FAX 856-232-6197

DIAMOND COURT REPORTING

1 was in existence when the door was sold in 1996
2 and I think we looked at that earlier?

3 A. Yes, it was.

4 Q. And you are looking at Rosario 3 I
5 believe, the top photograph?

6 A. Yes.

7 Q. Now, that warning instructs the
8 user/operator of the door to stay at the
9 controller while the door is being operated; is
10 that right?

11 A. Correct.

12 Q. What is the purpose of that?

13 A. You are moving a large piece of
14 equipment up and down. For the safety of the
15 operator and people who may be around it and the
16 maintenance -- I mean, the concept of a piece of
17 equipment moving I want them to supervise the
18 operation of the door.

19 Q. Your company offered as an option, a
20 safety option in 1996, a dead-man switch for this
21 controller; is that right?

22 A. Yes.

23 Q. And that dead-man switch would
24 require constant pressure by an operator to move

1 MR. POPILOCK: Right.

2 BY MR. POPILOCK:

3 Q. Is that why you have this
4 instruction to stay at the control panel, because
5 you know sometimes people would move away from it?

6 A. I'm telling them how I want my door
7 operated. I'm not asking them. I'm telling and
8 in this plaque I'm trying to be safe.

9 Q. And you are telling them to stay at
10 the control panel because it is safer to remain at
11 the control panel than to stray away from the
12 control panel?

13 A. Yes.

14 Q. How much would it have cost Schweiss
15 in 1996 to purchase this safety option of a dead-
16 man controller switch?

17 A. Roughly \$75.

18 Q. And if I understand it correct,
19 there is no need for a different control panel,
20 it's merely the switching of a wire in the same
21 control panel?

22 A. I am not sure of the real process.

23 Q. Are you aware that after Mr.
24 Douglas's accident contact was made between

1 Schweiss and Modern Mushroom concerning the dead-
2 man switch?

3 A. Yes.

4 Q. And are you aware that Schweiss made
5 recommendations on how to change the electrical
6 configuration of the controller?

7 A. Yes.

8 Q. And that change was to make it from
9 a switch that did not require constant pressure to
10 a switch that did require constant pressure?

11 A. Yes.

12 Q. And, in fact, Schweiss faxed
13 information to Modern Mushroom to show them how to
14 do it?

15 A. Yes.

16 Q. Do you know whether that information
17 that was faxed from Schweiss to Modern Mushroom
18 depicting how to convert it to a dead-man switch
19 is the same manner that it comes from the factory
20 if someone purchases a door with a dead-man
21 switch?

22 MR. DEVLIN: John, I'm sorry. I
23 don't understand that. Do you mean is it
24 included in the manual that is provided?

5 1 Q. Pre-wired. Okay.

2 Is the control box internally also
3 pre-wired?

4 A. Yes.

5 Q. By whom is it pre-wired?

6 A. Back at our factory.

7 Q. This is pre-wired by your company at
8 the factory?

9 A. Yes.

10 Q. Did I understand you to say that the
11 way that your company wires it back at the factory
12 is that you can push the up button and take your
13 finger away and the door will continue to run
14 without anybody continuing to press on any
15 buttons?

16 A. If you push on the button the door
17 will go up and you take your finger off it will
18 continue going up until it hits the top limit.

19 Q. So the way your company pre-wires at
20 the factory you do not have to continually hold in
21 the up button with your finger for the door to
22 continue to operate?

23 A. Correct.

24 Q. When your company installs a door

5 1 Q. Did you ever consider whether or not
2 the \$75 charge would have any influence on whether
3 a customer would or wouldn't order the operation
4 of a dead-man control?

5 A. No.

6 Q. Prior to this lawsuit did you or
7 your company ever consider whether or not having a
8 policy of wiring your standard wires as dead-man
9 on the control would increase the safety for the
10 operator?

11 A. No.

12 Q. Prior to this accident did you ever
13 consider whether or not having a policy of
14 requiring a pre-wiring of the controls to be in a
15 dead-man continuous pressure operation would
16 increase the potential that there would be a
17 operator standing at the control at all times
18 while the door was in operation?

19 A. Run that by me again.

20 Q. Sure. At the time that your company
21 decided that you were going to send the controls
22 as your standard without it being a dead-man
23 continuous pressure operation did you ever in
24 making that decision consider that if you reversed

5 1 your decision and had said, "Hey, let's make our
2 2 standard operation be we ship them out with a
3 3 dead-man continuous pressure, that that type of
4 4 policy would have required that there always be
5 5 somebody standing at the control while the doors
6 6 were moving up or down?

7 A. No.

8 Q. Now, did I understand you to say to
9 9 Mr. Popilock earlier today that when your company
10 10 got a call from Modern Mushroom about whether they
11 11 could change the controls to the door to the
12 12 continuous pressure dead-man operation that was
13 13 something that you were able to handle for them
14 14 without even coming back out here? You just
15 15 handled that by sending them a fax?

16 A. Yes.

17 Q. And did I understand you to say that
18 18 you didn't charge them for that information, the
19 19 fax or any of that work?

20 A. Did not charge them.

21 Q. At the time that you got that
22 22 request from Modern Mushroom about how they could
23 23 change their controls and if they could change
24 24 their controls over to a dead-man operation did

8 1 again.

2 MR. DEVLIN: That's not what the
3 warning says.

4 BY MR. ABELL:

5 Q. Does your warning say that the
6 operator should not walk away from the controls
7 while the door is in motion?

8 A. Right.

9 Q. Why is it that your company puts
10 that warning?

11 A. Why? Because you are moving a large
12 piece of equipment up, it has moving parts on,
13 it's mechanical and for people, pedestrians, dogs,
14 cats, equipment, I want them to be ready and alert
15 to shut it off if something would happen.

16 Q. So it would be fair to say that the
17 reason is so there is somebody there to stop the
18 motion of the door if for some reason the door
19 motion should be stopped?

20 A. Correct.

21 Q. Would you say that that warning was
22 for safety reasons?

23 A. Yes.

24 Q. Did you ever consider that an

8
1 alternative way to address the safety concern
2 about the need to stop a door could be addressed
3 by having a dead-man control which would
4 physically require there be a person standing
5 there?

6 MR. DEVLIN: Asked and answered.

7 Answer it again but this is all
8 stuff Popilock went over. Mr. Popilock I
9 should say.

10 THE WITNESS: Do you want to ask
11 that again?

12 BY MR. ABELL:

13 Q. Sure. After you identified that
14 that would be a benefit to having a person
15 standing by the control so that the door could be
16 stopped, that was a safety concern, did you
17 consider having that safety concern addressed by
18 only selling doors where the control is wired as a
19 dead-man operation?

20 A. No.

21 Q. Do you believe there are any
22 circumstances in which a single push control, and
23 by that I mean where you can push the control and
24 then take your hand away for it and the door will

8 1 control?

2 A. That's an up-down stop station.

3 Q. The operation that I just described
4 where a person can push the control, take their
5 finger away and the door will continue to operate,
6 I have called that a single push operation.

7 A. Okay.

8 Q. Can you think of any circumstances
9 in which a single push operation would provide
10 more safety than a dead-man operation?

11 A. No.

12 Q. I would like to move to the
13 insulation that was on the door.

14 A. Okay.

15 Q. Did your company apply the
16 insulation to that door?

17 A. Yes.

18 Q. Did your company decide the type of
19 insulation that was going to be applied to the
20 door?

21 A. We don't decide. We offer a type.

22 Q. At the time of the sale to Modern
23 Mushroom what type of insulation did you offer for
24 a door?